

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
Plaintiff	:	
	:	
vs.	:	CRIMINAL NO. 1:CR-00-50-02
	:	
KENNETH O. SIMMONS, JR.,	:	
Defendant	:	

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On August 26, 2003, we vacated Defendant's conviction and sentence for a violation of 18 U.S.C. § 924(c)(1), as charged in Count V of the indictment. The vacated sentence consisted of a term of sixty (60) months imprisonment, a fine of \$1000, and a special assessment of \$100.00.

On May 19, 2004, Defendant filed a motion to correct his sentence by deducting the \$1,100 associated with his vacated sentence and conviction. He alleges that this aspect of his sentence has not been corrected. We agree the fine and assessment imposed on Count V should be remitted.

The Defendant also seeks to alter the payment provisions associated with his sentence. At sentencing, Defendant was ordered to pay his fines and assessments immediately and in full.

He now seeks to have the payment period adjusted to quarterly payments. A defendant may seek to correct a sentence resulting from "arithmetical, technical, or other clear error" within seven (7) days of sentencing under Federal Rule of Criminal Procedure 35(a). Defendant's motion to alter the terms of his monetary obligations falls outside of this time frame, and we therefore lack jurisdiction to alter his sentence. *United States v. Morales*, 328 F.3d 1202, 1205 (9th Cir. 2003).

AND NOW, this 1st day of November, 2004, it is Ordered that:

1. Defendant's fine of \$1,000.00, and special assessment of \$100.00, imposed on Count V in this case, are vacated.
2. Defendant's motion to alter his payment period is dismissed for lack of jurisdiction.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge